

ESTATE OF FRANK (TATE)	:	Order Docketing Appeal and
NEVAQUAYA TOOAHIMPAH	:	Remanding Case
	:	
	:	Docket No. IBIA 94-4
	:	
	:	October 19, 1993

Appellant Paul Tooahimpah seeks review by the Board of Indian Appeals (Board) of the failure of Administrative Law Judge Richard L. Reeh to modify the estate of Ernest Tooahimpah Tate, IP OK 29 P 91, by determining the heirs of Ernest's body in order to vest the remainder interest in Comanche Allotment 1599. Modification of Ernest's estate was requested by the Anadarko Agency Superintendent, Bureau of Indian Affairs (Superintendent), in a January 14, 1993, to Judge Reeh. Judge Reeh responded by letter dated August 23, 1993, stating that the meaning of the phrase "heirs of the body" was currently on appeal to the United States Court of Appeals for the Tenth Circuit, and that any determination of such persons would have to await the decision in that case.

The present situation arises from the will of Frank (Tate) Nevaquaya Tooahimpah. Frank's estate has been before the Board on two previous occasions. See 15 IBIA 258 (1987) and 21 IBIA 222 (1992) (Tooahimpah II). As discussed in those cases, Frank left life estates in certain property to his children, with the remainder interests to vest in the "heirs of their bodies." The present appeal to the Tenth Circuit Court of Appeals arose from the Board's decision interpreting the phrase "heirs of the body" in Tooahimpah II, which was affirmed in Pahdopony v. United States of the Interior, No. CIV-92-641-W (W.D. Okla. Dec. 16, 1992).

Although appellant and the Superintendent styled their request as one for a modification of Ernest's estate, the Board believes that it is more properly characterized as one to reopen Frank's estate for the limited purpose of determining the heirs of Ernest's body in order to vest the remainder interest in the property in which Ernest held a life estate. This is the procedure that was followed in Tooahimpah II. Accordingly, the Board has styled this case as set forth above.

At issue in Tooahimpah II was whether an individual who was adopted by her great-aunt was an "heir of the body" of that great-aunt. It appears that the question in the present matter is whether an individual who was adopted by her grandfather was an "heir of the body" of that grandfather. The two cases are not identical, and the determination may or may not be controlled by the decision in the pending appeal.

The Board does not know when the Circuit Court will issue its decision. In the meantime, however, Judge Reeh should undertake to address the issue raised in the Superintendent's request to the best of his ability under the present state of the law. It is possible either that the Judge may not be able to determine whether Ernest's adopted daughter/granddaughter is an "heir of his body" or that there are prudential reasons for delaying such a determination until the Tenth Circuit issues its decision. However, unless there are other problems not evident in the materials presently before the Board, it appears that the Judge should be able to determine the identity of the other "heirs of Ernest's body" without waiting for the appeal to be decided. Under 43 CFR 4.274(b), the Judge is authorized to make partial distributions during the pendency of a petition for rehearing or reopening. If necessary or appropriate, the Judge can use this authority to order partial distribution to those "heirs of the body" who can be determined, while holding in abeyance any interests that cannot be finally determined at this time.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1 and 4.318, this appeal is docketed and remanded to Judge Reeh for consideration in accordance with the preceding discussion.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge